

UNAUTHORIZED IMMIGRANTS AS “AMERICANS IN WAITING:” A CALL FOR RE-ARTICULATING THE SCOPE OF LEGALITY AND DOCUMENTEDNESS

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A Review of *Immigration Outside the Law*

By Hiroshi Motomura

(New York: Oxford University Press, 2014), 338 pages.

Recent debates on immigration, both in the United States and abroad, have become increasingly controversial and politically charged. In the wake of President Obama’s November 2014 executive action to grant approximately 5 million unauthorized immigrants in the United States protection from deportation, Congress remains deadlocked on the immigration issue, as Republicans threaten to reverse the president’s actions by withholding funding from the U.S. Department of Homeland Security. In Europe, anti-immigration sentiment appears to be on the rise, as evidenced by the relative success of nativist movements in last year’s European parliamentary elections and recent large-scale anti-immigration demonstrations in Germany.

Given the highly personal and emotional nature of the issue, finding a balanced analysis of immigration policy can be difficult. Fortunately, Hiroshi Motomura, an award-winning author, scholar, and teacher of immigration and citizenship law, achieves this balance in his most recent book, *Immigration Outside the Law*. Motomura effectively explains why immigration law can be so ambiguous and contentious without overly promoting normative claims or any side’s political aims. Motomura succeeds in developing a conceptual framework for understanding current immigration debates that is sensitive to the history of immigration and the political and institutional constraints that make immigration law so difficult. Through clear and concise language, Motomura delivers a pragmatic assessment of the challenges associated with unauthorized migration and provides an encouraging policy prescription.

Motomura’s framework rests on three themes that he derives from the 1982 U.S. Supreme Court decision, *Plyler v. Doe*—a landmark case that established a child’s constitutional right to attend elementary and secondary school regardless of immigration status. *Plyler v. Doe* is useful because a thoughtful analysis of the case illuminates the rhetoric on both sides of the U.S. immigration debate as expressed throughout the last three decades.

The first theme—the significance of unlawful presence—is the focus of the first chapter of the book, and it is the foundation upon which the remainder of


Motomura's analysis sits. Here, the author clearly shows how ambiguous a determination of unlawful presence can be, particularly given the variability of enforcement discretion between states and localities and the inconsistency inherent in the process of transitioning from an unauthorized migrant to a lawful one (a process that Motomura refers to as "selective admissions"). Motomura makes the fascinating claim that ambiguity between characterizations of "legal" and "illegal" is the result of a system in which the implementation of immigration law is consistently at odds with the letter of the law itself, due to "countless decisions by government officials who exercise discretion...in ways that can be inconsistent, unpredictable, and sometimes discriminatory."¹

The second theme—the role of states and localities—illuminates the federalist component of the immigration issue by focusing on the divergence among authorities regarding the treatment of unauthorized migrants across levels of the government. Motomura provides an exhaustive account of the history of the role of states and localities in immigration law, and he employs this account to develop a conceptual framework for understanding the primary dimensions of the state and local roles. Reflecting specifically on the notable (and highly controversial) 2010 Arizona state law that targeted unauthorized migrants, Motomura develops a spectrum that illustrates the diverging approaches that state and local governments employ vis-à-vis immigration—from enhancing enforcement of federal immigration law to neutralizing federal enforcement and legalizing unauthorized migrants. Though President Obama's recent executive actions on immigration occurred after this book's publication, scholars examining these actions will find this portion of the book to be tremendously useful.

The final theme—the integration of unauthorized migrants—is an extension of Motomura's previous book, *Americans in Waiting*, which focused on immigrants who are lawfully in the United States. By "integration," Motomura refers to policies at the national level designed to foster the assimilation of unauthorized migrants into society through access to work, housing, education, and identification documents. Motomura provides a thoughtful exploration of the tension between immigration regulations that maintain national borders and standards of human dignity based on equality. Simply put, borders constrain equality because they limit the freedom of movement of non-citizens. In perhaps the most normative section of the book, Motomura contends that unauthorized immigrants should be treated as "Americans in waiting," who are entitled to integration as a way of remedying the tension between borders and equality. Motomura believes that integration is justified because he views immigration as a "contract" (a reciprocal relationship between the unauthorized migrant and the United States) and as an "affiliation" (a recognition of the unauthorized migrant's contributions to his or her commu-

nity).² While Motomura acknowledges potential objections to this approach, he does not adequately address reasoned counterarguments that dispute the validity of contractual obligations to immigrants who are in the country illegally. That said, Motomura's argument is intriguing because it sets the stage for a careful consideration of policy options for addressing the sharp increase in unauthorized migrants in the United States over the last few decades.

After a thoughtful discussion of the interdependence of the three *Plyler* themes, Motomura closes with a chapter that focuses on the policy implications of his analysis. Here, Motomura promotes temporary worker programs as a remedy for and an alternative to unauthorized immigration. According to Motomura, admitting more temporary workers would reduce the total number of unauthorized migrants in the United States while bolstering the U.S. economy and fostering international economic development. Motomura contends that the state and local roles in immigration enforcement should be minimized due to those jurisdictions' propensity to discriminate on the basis of race or ethnicity. Rather, states and localities should be most active in the integration of unauthorized migrants as part of a broader framework of national citizenship. While Motomura's focus on temporary worker programs is helpful given its potential for tangible policy applications, it is slightly disappointing that he provides such a narrow set of policy recommendations, particularly after such a comprehensive assessment of the immigration issue in the first six chapters of the book.

The previous critique notwithstanding, this book should be required reading for scholars studying immigration law; policymakers in the border region at the local, state, and federal level; and members of Congress charged with drafting policy and implementing laws on immigration. Motomura's analysis is comprehensive, pragmatic, innovative, and very readable. That said, while the shortcomings of the book are minimal, the reader who hopes that Motomura will uncover a silver-bullet solution to the unauthorized immigration issue will be left unsatisfied. While Motomura's recommendations are sensible and well-developed, the reader is left wondering whether parties on all sides of the immigration issue can overcome political constraints in order to have the kind of informed national conversation that Motomura urges. Motomura is not sure if the ethos evident in *Plyler v. Doe* is vibrant in the United States today, but if it is, his analysis of unauthorized migration in this book could serve as the conceptual foundation for future action. 

NOTES

¹ Hiroshi Motomura, *Immigration Outside the Law* (New York: Oxford University Press, 2014), 22.

² *Ibid.*, 110.